IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.830 OF 2006

Dilip Nana Misal ..Petitioner

Vs.

The State of Maharashtra ..Respondent

Mr.S.B.Shete for the petitioner

Mrs.A.S.Pai, A.P.P. for the state

CORAM : J.N.PATEL &
SMT.ROSHAN S.DALVI, JJ.

DATED : 16TH AUGUST, 2006

P.C.:
1. Heard.

2. This is a petition received through Jail from a prisoner Dilip Nana Misal who has been convicted for having committed offence under section 302 of the Indian Penal Code i.e. committed murder of his own wife. The petitioner prisoner applied for furlough which came to be rejected by Dy.I.G.of Prisons, Western Region on the basis of report received from Superintendent of Police, (Rural) Pune.

3. The only ground on which the application for furlough has been rejected is that on enquiry from the Police, Patil Gulabrao Shinde, it appears that if the prisoner is released on furlough, peace and tranquillity of the village would not be safe.

4. In our view, such a report has no basis for the simple reason that the petitioner is convicted for committing murder of his wife and there is no material placed before the court by the respondent to show how peace and tranquillity of the village is likely to be disturbed, if the petitioner is released on furlough.

5. We may also record that inspite of this matter being adjourned, no affidavit in reply has been filed by Dy.I.G.of Prisons which rather indicates that the respondent state does not want to contest the petition. If that is so, Dy.I.G.of Prisons ought to have ordered release of the prisoner on furlough on usual terms and conditions.

6. It is expected of the competent authority

i.e. Dy.I.G.of Prisons to apply his mind to the case of each individual prisoner before accepting the routine adverse reports sent by Superintendent of Police or the District Magistrate. We can take judicial notice of the fact that adverse police reports in such matters are normal and as a routine always negative to the prisoner. Therefore, we quash and set aside the impugned order and direct the Dy.I.G. of Prisons, Western Region, Pune to pass fresh orders on the application of the petitioner ignoring the report of Superintendent of Police, Pune.

7. This being the first opportunity, we are not saddling the respondent with any cost for driving the prisoner to this court to invoke its extraordinary jurisdiction and consuming its valuable time without any justification. We expect compliance of our order within 7 days from today. Petition disposed of accordingly.

(SHRI J.N. PATEL, J)

(SMT.ROSHAN DALVI, J)